

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

**Civil
Case No. 17/1173**

**BETWEEN: James Bani, Krem Joshua, John Vira and Kami
Toa**
Claimants

**AND: Zebedee Paul Tanga, Paul Yau, Bradley Moli,
Silas Fatu, Harry Tura, Simon Paia, Amos Karai,
Hollinsworth Tari, Levi Karo, Joseph Vira,
Isaiah Iokam, Freeman Nariu, Zule Molou**
Defendants

Coram: Justice Dudley Aru
Counsel: Mr. Hakwa for the Claimants
Mr. Nalyal for the Defendants

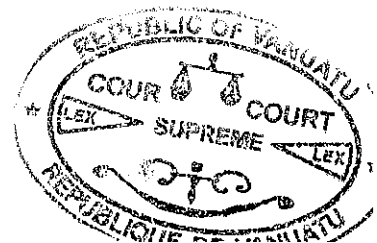
RESERVE JUDGMENT

Introduction

1. This is a dispute between members of the Apostolic Church of Vanuatu (ACV) over membership of the governing Council and Presidency of the ACV.

Background

2. The parties are all members of the Apostolic Church.
3. It is not disputed that the ACV was incorporated as a charitable association under the Charitable Associations (Incorporation) Act [CAP 140] on 27 October 1992 with the Second Edition Constitution (the Constitution) dated 17 July 1992 as its certified legal document.
4. This Constitution makes provision for a supreme decision making body to be known as the Council of the ACV (the Council), composition of the Council and the manner and procedure for appointing and terminating members of the Council.



5. The claimants bring the claim to challenge the meetings held and appointments made which they say were not in accordance with the provisions of the Constitution.

Summary of the pleadings

The claim

6. In brief the claimants allege that the initial members of the Council and the Committee failed to comply with the provisions of the Constitution and the Act. That all the appointments and elections made by the Council including that of the defendants were unlawful.

7. The relief sought were:-

- i) Declarations that all the defendants are not members of the Council of the ACV;
- ii) Declarations that Mr Zebedee Tanga is not the President of the ACV
- iii) Declarations that the defendants are not members of the Apostolic Church (Vanuatu) Committee Inc.
- iv) Orders restraining the defendants from calling or holding themselves out as members of the Apostolic Church (Vanuatu) Committee Inc.
- v) Orders restraining Mr Zebedee Tanga from calling or holding himself out as the President of the Apostolic Church (Vanuatu) Inc
- vi) Orders directing each and any of the defendants to return forthwith all properties or assets of the ACV which he has acquired or has taken possession of by reason of his purported appointment or election as a member of the Council
- vii) Orders that the claimants together with other leaders of the ACV forthwith within three months convene a meeting of the members of the ACV as prescribed by the second edition Constitution to elect new members of the Council.

Defence and counterclaim

8. The defendants in summary say that the claimants have all been terminated from the ACV and are no longer members of the ACV. That Mr Zebedee Tanga is the President of the ACV and was properly elected by the Council. Thirdly the defendants say that all meetings and elections held were proper and counterclaim that the claimants have no standing to bring the claim as they are not members of the Committee or the church and were terminated by the Council. They allege that the claimants are causing confusion within the church.

9. The orders sought in their counterclaim are:-

- i) Restraining orders against the claimants and their agents from using the name Apostolic Church (Vanuatu) Committee Inc;
- ii) Restraining orders against the claimants from conducting meetings in the name of ACV;
- iii) Declarations that they the defendants are duly elected members of the ACV;
- iv) Orders that the claimants surrender all properties of the ACV in their possession; and
- v) Restraining orders to prevent claimants interfering with the running of the ACV.

10. The claimants filed a defence denying the relief sought in the counterclaim.

Evidence

11. The claimants filed and rely on the following evidence in support of their case:-

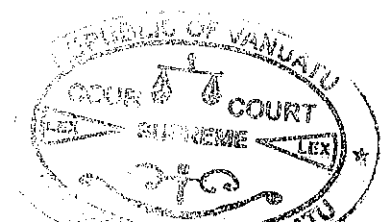
- Sworn statement of Mr Kami Toa filed on 28 August 2017 and tendered as **Exhibit "C1"**
- Sworn statement of Mr Allanrow Bani filed on 28 August 2017 and tendered as **Exhibit "C2"**
- Sworn statement of John Vira filed on 28 August 2017 and tendered as **Exhibit "C3"**

12. The defendants rely on the following evidence filed in response:-

- Sworn statement of Bradley Moli filed on 2 October 2017 and tendered as **Exhibit "D1"**
- Sworn statement of Pastor Silas Fatu filed on 2 October 2017 and tendered as **Exhibit "D2"**
- Sworn statement of Zebedee Tanga filed on 10 October 2017 and tendered as **Exhibit "D3"**

13. A number of objections were raised by the claimants to Mr Moli and Mr Fatu's sworn statements at trial on the grounds of irrelevance and inadmissibility and opinion and hearsay evidence. The objections were allowed. In relation to Bradley Moli's sworn statement the following annexures were struck out: **BMC1** to **BMC58** and **BMC60** and **BMC61**.

14. In relation to Silas Fatu's sworn statement the following annexures were struck out: **SFC1** to **SFC 58** and **SFC60** and **SFC 61**.



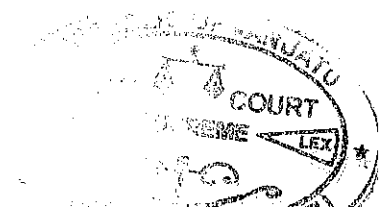
Issues

15. The main issue is whether the defendants were properly and lawfully appointed as members of the Council of the ACV to compose the Council within the meaning of the ACV Constitution. Secondly whether Mr Zebedee Tanga has been lawfully appointed as President of the ACV.

Submissions

16. The claimants make the following submissions:-

- There is no evidence provided by the defendants to show that each of them was eligible to be appointed or elected as a member of the Council and his election or appointment complied with Article 7 of the Constitution. Furthermore Bradley Moli, Silas Fatu and Simon Paia as initial members of the Council could not perform the functions and duties of the Council without the presence of the required quorum.
- Bradley Moli's appointment or election as President of the ACV was made by a wrongfully constituted Council without a quorum to transact any business and any decision made is null and void.
- The Council comprising other defendants other than Bradley Moli was not lawful as none of its members had been elected or appointed by a lawfully constituted Council pursuant to Article 7 of the Constitution therefore the Council comprising the defendants was not entitled to perform any functions of the Council or hold itself out as a lawful Council.
- It was submitted that as such all the decision taken by the Council comprising the defendants was invalid.
- As a result it was submitted that the purported Council which met on 3 May 2016 to elect or appoint Zebedee Tanga as President of the ACV was not a proper lawful Council as its members were not appointed according to Article 7 of the Constitution therefore Zebedee Tanga's appoint was unlawful.
- This Council meeting could not be lawful as it was chaired by Timothy Jack an Australian National who is not a member of the Council.
- As a result it was submitted that Zebedee Tanga was not entitled to perform the functions of the President of the ACV and every decision he made were invalid and every decision taken by the Council led by Zebedee Tanga were invalid.



- In response to the counterclaim the claimants submitted that they were not claiming as members of the Apostolic Church (Vanuatu) Committee Inc but as members of the ACV who attend the Apostolic Church at Ohlen in Port Vila which under the Constitution is described as a Local Assembly pursuant to Article 14.
- The claimants submit that they have standing to bring the claim and submit that the counterclaim concerning their termination as members of the ACV or that they have committed a tort or that they have caused damages to the name of the ACV is misconceived.
- On the question of whether the matter was res judicata the claimants submit that this is also misconceived as the Courts have yet to make a final determination of the matter. Secondly, the defendants did not plead res judicata in their defence and therefore cannot now raise it in their submissions.

17. For the defendants their submissions could be summarised as follows:-

- They submit that the matter is res judicata and should be struck out;
- Secondly they submit that the claim was filed in breach of rule 9.9 of the Civil Procedure Rules and is an abuse of process as the same claim was discontinued as a judicial review claim and filed as a civil claim.

Laws

18. The Constitutional provisions which are of relevance for consideration are as follows :

19. Clause 6 provides for the Council and states:-

“COUNCIL

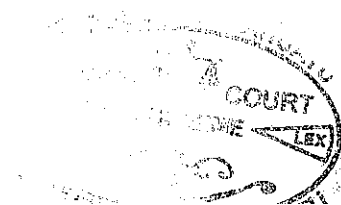
6. The church shall have a body known as the Council of the Apostolic Church of Vanuatu (hereinafter called the Council)

20. Clause 7 provides for the composition and the appointment of Council members and states:-

“ CONSTITUTION AND APPOINTMENT OF COUNCIL MEMBERS

7. (a) The Council shall consist of the President of the church for the time being and twelve (12) elected members .

(b) the Council shall meet two (2) times in any one year approximately six (6) months apart . The first meeting in any year shall be held in the month of



February . The second meeting in any year shall be held in the month of August ,and it shall be at this meeting that the appointments and termination of appointments of Council and Committee members shall be made .

- (c) The manner of appointment of new council members shall be by consensus and ten (10) members of the council shall be a quorum . In the case where there is no consensus the matter shall be deferred to the next meeting.*
- (d) Appointment will be based on suitable qualifications particularly those of character , experience and education .*
- (e) The first appointed members shall consist of the persons named in schedule 1 of this Constitution .*
- (f) At its August meeting the council shall review the terms of its members who are eligible for retirement and who submit their applications or requests to resign with justifiable reasons .Members attaining 60 years of age will be eligible for retirement . Members who are older than sixty (60) will be permitted to continue in office should they so choose and should the council agree.*
- (g) The council may act for all purposes notwithstanding any vacancy in their number and all proceedings at any meeting of the council shall be valid and effectual notwithstanding that it may be afterwards discovered that any member of council has been informally elected or is not properly qualified . ”*

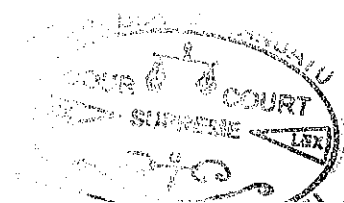
21. Clause 20 relates to the appointment of officers including the President and states :

“OFFICERS

- 20. (a) There shall be a President of the church . The President shall be appointed by the council . The President shall preside at all meetings .*
- (b) The Council may appoint or engage on such terms and to discharge such duties as they may think fit, a secretary and such other officers and such other servants as they shall see fit and may dismiss any secretary, other such officers and servants as the shall see fit and dismiss nay secretary, other officer or servant so appointed or engaged .”*

Discussions

- 22. All the parties are members of the Apostolic Church. As such when the claim was filed I gave the parties time to try and resolve the matter amongst themselves. That did not work out and the matter proceeded to trial.



23. Under the Act as amended a Committee of not less than 6 members of an association or body established for charitable purposes may apply to be incorporated as a corporate body. The application form requires members of the Committee who are applying to state the date of their election or appointment in line with the provisions of the Constitution. Those who applied for incorporation were all elected on 22 February 1990. They are:-

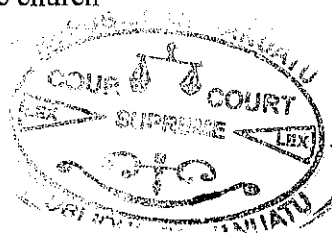
Dean Polkinghorne
Peter Tari
Bradley Moli
Johnson Bihu
Charley Tangwata
Ephraim Moli

24. The first members of the Council were those persons listed in schedule 1 of the Constitution namely:-

Silas Fatu (National President)
Bradley Moli (National Secretary)
Peter Tari
Ephraim Moli
Joseph Moli
Johnson Tagaro
Willie Bihu
Joelson Lingi
Gideon Vanua
Nicodemus
Stanley Moli
Robert Zacharie
Simon Pire

25. This is admitted by the defendants in their defence and is not disputed. Out of the applicants who applied for incorporation only Bradley Moli, Peter Tari and Ephraim Moli were named as first members of the Council listed in schedule 1. It was also admitted by the defendants in their defence that out of the 13 original members 9 have passed away leaving only 3 members although they say new members have been appointed. This is the subject of the dispute.

26. The Constitution recognises that the body corporate is to be known as the Council with its first members listed in schedule 1 of the Constitution referred to above and not the Committee which applied for incorporation. It is the Council that is empowered to invest church funds, acquire and deal with or dispose of land on behalf of the church

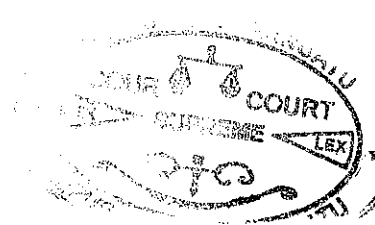


,it can enter into contracts on the behalf of the church and it can borrow money secured by any property of the church (Art 9 a) b) c) d)).

27. The Council consists of the President and 12 elected members. (Art7a). Their meetings are to be held twice a year in February and August. In the August meeting, the Council is required to consider appointments and terminations of appointments of Council members (Art7b). The manner of appointment of new members is by consensus and the required quorum for such meeting is 10 members. (Art7c) The appointment criteria is suitable qualifications in relation to character, experience and education. (Art7d)
28. At the August meeting as well the Council may review terms of members eligible for retirement and those who resign. Members who are 60 years of age are eligible for retirement and may continue if they so choose and if the council agrees. (Art7f)
29. The President, Secretary and members of the council may call meetings by giving 30 days' notice and the quorum for such meetings is 8 members. (Art10 a) Minutes of such meetings may be signed by the Chairman or any member of the Council present. (Art10c).
30. Officers include the President appointed by the Council who shall preside at all meetings and a Secretary may also be appointed by the Council on such terms and to discharge such duties as they see fit. (Art10a) and b).
31. Having considered the above provisions it would appear to me that the Constitution is silent or is not specific on a number of things namely; the manner, process and body or forum responsible for electing the 12 members of the council. On the contrary Clause 7 b) to f) seems to vest the power to appoint, terminate and review terms of its members in the Council itself. There is also no provision for automatic qualification a member of the Council and the term of appointment of members is not clearly specified.
32. Furthermore, local assemblies are established for each geographical area to which the church has its members. (Art 14a). They are administered by their own assembly governments and are responsible directly to the Council . (Art 14b) and f). However the Constitution is silent and does not specify that local assemblies are to elect or nominate their representatives to serve on the Council.
33. It is within this context and the observations made that I am required to determine this matter.

Res Judicata and abuse of process

34. These are matters raised by the defendants and can be easily disposed of as follows. Although raised in their submissions these matters were not pleaded in their defence



and counterclaim. Secondly, there is no judgment giving finality to the issues raised by the claimants therefore res judicata does not arise.

35. There may be argument that the matter is an abuse of process but this is not pleaded by the defendants in their defence therefore they cannot now raise it in their submissions. The submission is that the matter was filed previously as a JR claim with similar parties including the Commissioner of the Vanuatu Financial Services Commission then discontinued and filed as a civil claim without having informed Chetwynd J who was dealing with the JR claim.

Appointment/election of the defendants as members of the Council and Zebedee Tanga as President

36. Out of the initial members of the Council listed in schedule 1 it is not disputed that only three members remain and all other members have passed away .These three members are Bradley Moli, Silas Fatu and Simon Paia.
37. The claimants submit that none of the defendants have been lawfully elected or appointed as Council members and Mr Tanga has not been lawfully elected as President pursuant to the provisions of the Constitution. Kami Toa was cross examined. His evidence was not challenged with regards to non-compliance with the Constitution on the appointment of the defendants. Similarly Allanrow Bani was asked in cross examination why his group did not join Zebedee Tanga's group and he confirmed that Mr Tanga's Council was set up outside the procedures set out in the Constitution.
38. The defendants on the other hand dispute that and submits that they are lawfully elected or appointed members of the Council. Bradley Moli under cross examination stated that the members of the council are recommended by their local assemblies. Mr Tanga under cross examination said he was nominated by Stanley Moli to be a member of the Council and remained as member until his appointment as President. He confirmed that Timothy Jack was never a member of the Council when he took over as chairman of the meeting on 3 March 2016 and Bradley Moli did not resign as President .Silas Fatu was cross examined on how deceased members of the Council were replaced and he said their positions were handed over to another person in the case of late member Ephraim Moli. Mr Fatu maintained that he was still a member of the Council yet in all the meetings from 20 February 2012 meeting in Luganville, Santo to 3 March 2016 meeting at Dumbea in Vila he was also Secretary. This is contrary to Article 20 of the Constitution as it does not say that a secretary is to be appointed from amongst members of the Council.
39. Second, Article 14 does not state that local assemblies are to recommend representatives to serve on the Council. In the same vein no other a provision of the Constitution enables an individual or a member to nominate someone to be a member of the Council.



40. From 1992 onwards following incorporation of the ACV after other members became deceased the only members recognised under the Constitution as lawfully appointed were Bradley Moli , Silas Fatu and Simon Paia . Mr Moli could not have been lawfully elected president by the meeting of 13 February 2014 in Luganville due to lack of quorum and the fact that other members present aside from Silas Fatu and Simon Paia were not properly appointed but he was nevertheless still a member.
41. Article 7a) specifically states that the Council shall consist of the President and 12 elected members. The process of electing these 12 members is not provided for anywhere in the Constitution. Under Article 7 b) ,c) and d) it is the Council in its August meeting with a quorum of 10 members that appoints and terminates members and such appointments are to be based on character , experience and qualification.
42. Bradley Moli, Silas Fatu and Simon Paea could not constitute the required quorum of members of the Council to appoint the other defendants as members or to validly transact business of the Council. These equally applies to meetings held inclusive of other members in the meetings of 20-21/2/12 in Luganville , 27-28/8/12 on Ambae, 13-14/2/14 in Luganville, 24-26/11/15 in Vila and the meeting of 3/3/16 also in Vila.

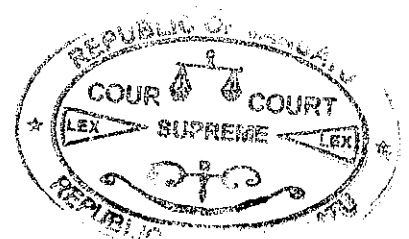
Standing

43. The issue of standing was raised by the defendants in their submissions and pleaded in their counterclaim. The defendants submitted that the claimants lacked standing to bring the claim as they are not members of the Committee or the Apostolic Church. The unchallenged evidence of Kami Toa, Allanrow Bani and John Vira is that they are all members of the Apostolic Church at Ohlen in Vila.
44. Mr Moli and Mr Fatu acknowledged by their own evidence when cross examined that the claimants are members of the Apostolic Church who were disciplined by the Council. The Council then resolved to bring them back but they refused the Council's offer.
45. As stated above the Council could not discipline anyone as it was not composed in line with the provisions of the Constitution and had no powers to do what it did.

Findings

46. The claimants had standing to bring the claim .From 1992 onwards the Council had only three remaining members it could not have been quorate to transact any business or validly appoint any new members. The following meetings were all held contrary to provisions of the Constitution namely meetings of:-

- 20 – 21/2/12 meeting in Luganville , Santo



- 27 – 28/8/12 meeting at Walaha, West Ambae
- 13 – 14 /2/14 meeting in Luganville Santo
- 24-26/11/15 meeting at Dumbea , Port Vila
- 3 March 2016 meeting at Dumbea , Port Vila

47. Furthermore I find that:-

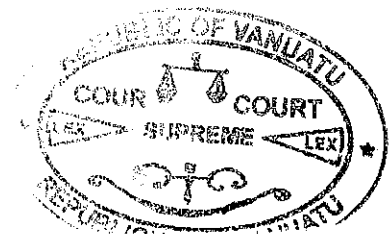
- Aside from Bradley Moli , Silas Fatu and Simon Paea ,the rest of the defendants could are not and cannot be members of the Council of the Apostolic Church of Vanuatu incorporated on 27 October 1992;
- Zebedee Tanga is not and cannot be the President of the Apostolic Church of Vanuatu incorporated on 27 October 1992;
- The defendants are not and could not be members of the Apostolic Church of Vanuatu Committee incorporated on 27 October 1992.

48. Based on the above findings, the counterclaim cannot be sustained and is hereby dismissed.

Result

49. I now issue the following Declarations and Orders:

- A DECLARATION** that all the Defendants are not members of the Council except Bradley Moli , Silas Fatu and Simon Paia;
- A DECLARATION** that Zebedee Tanga is not the President of the Apostolic Church of Vanuatu;
- A DECLARATION** that all the defendants are not members of the Apostolic Church (Vanuatu) Committee (Inc.) except Bradley Moli ;
- AN ORDER** restraining the defendants from calling or holding themselves out as the National Council of the Apostolic Church of Vanuatu ;
- AN ORDER** restraining the defendants from calling or holding themselves out as the Apostolic Church (Vanuatu) Committee Inc.;
- AN ORDER** restraining Zebedee Tanga from calling or holding himself out to be the President of the Apostolic Church (Vanuatu) Committee Inc.;

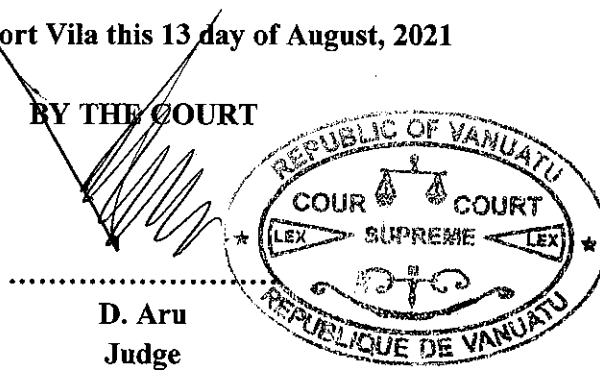


- g) **AN ORDER** directing that any one defendant who has in his possession by reason of his purported appointment or election as a member of the Council any property or asset of the Apostolic Church of Vanuatu to return it forthwith; and
- h) **AN ORDER** that the claimants together with the other leaders of the Apostolic Church of Vanuatu including Bradley Moli, Silas Fatu and Simon Paea forthwith and not more than 3 months from the date of this orders convene a meeting of members of the Apostolic Church of Vanuatu to elect new members of the incorporating Committee and to consider, review and amend the Constitution to provide clarity before electing or appointing new members of the Council.

50. The claimants are entitled to costs to be agreed or taxed by the Master.

DATED at Port Vila this 13 day of August, 2021

BY THE COURT



**D. Aru
Judge**

